

## REMARKS

Applicants appreciate the detailed examination provided in the final Office Action mailed July 26, 2005 (hereinafter "final Office Action"), including the allowance of Claims 69, 70, and 72-85 and the indication that claims 10, 18-20, 29-31, 38-44, 47, 48, 52, 55, 56, 62-68 and 90-96 recite patentable subject matter. Applicants respectfully request reconsideration and withdrawal of the rejections of Claims 1-9, 11-17, 21-28, 32-37, 46, 46, 49-51, 53, 54, 57-61, 86-89 and 97-108 for at least the reasons discussed herein. Applicants submit that the final Office Action fails to rebut the arguments of the remarks provided in the Amendment filed May 2, 2005, and, in the interest of brevity, hereby incorporate those remarks by reference herein. The following remarks focus on the "Response to Arguments" provided in the Office Action.

The Office Action has maintained the rejections of independent Claims 1, 12, 32, 50, 58, 86 and 99 under 25 U.S.C. § 103 as being unpatentable over Published PCT International Application WO 00/35112 to Atarius (hereinafter "Atarius"). In the Response to Arguments, the Office Action appears to continue to misunderstand distinctions between the threshold device 364 described in the cited portions of Atarius and elements of the claimed invention. In the Amendment of May 2, 2005, Applicants noted that the threshold device 364 appears to be a hard decision device, i.e., a device that generates a symbol estimate of "1" if the output of the accumulator 362 exceeds a predetermined threshold or a symbol estimate of "0" if the output of the accumulator is less than the predetermined threshold. ***The decision device 364 does not choose between two different symbol estimates for the same symbol*** along the lines recited, for example, in Claim 1. Rather, the decision device 364 chooses between two possible predetermined ***values*** (e.g., a "1" ***or*** a "0") for a symbol to generate a ***single*** symbol estimate for each given symbol.

This distinction may be highlighted by way of an example. FIG. 6 of the present application illustrates some embodiments of the present invention wherein a parallel-structured multi-process demodulator 630 uses parallel RAKE and G-RAKE processor circuits 631a, 631b to generate respective first and second symbol representations 635a, 635b for a symbol from a common signal sample source 625 using respective different RAKE demodulation processes. A quality discriminator 640 includes a decoder/error detector 642

that decodes the symbol representations 635a, 635b and selects decoded data corresponding to one of the symbol representations 635a, 635b based on respective quality indicators associated therewith. See Present Application, page 14, line 20 through page 15, line 12. In comparison, the system in Atarius represents only *one* demodulation process, i.e., the system in Atarius generates only *one* symbol estimate for each symbol. *Atarius does not disclose or suggest choosing between two (or more) representations generated for the same symbol.* The "choice" made by the decision device 364 in Atarius is between two possible *values* for a given symbol estimate, not between two symbol *estimates*. The possible values are *predetermined* and are not themselves generated from the signal being demodulated.

Therefore, for example, Atarius neither discloses nor suggests:

. . . correlating the spread spectrum signal with a spreading sequence at a first plurality of correlation times to produce a first plurality of time-offset correlations; processing the first plurality of time-offset correlations *to produce a first symbol representation for a symbol;* determining a first quality for the first symbol representation; and responsive to the determined first quality, determining whether to further process the first symbol representation or to process *a second symbol representation for the symbol generated from the spread spectrum signal.*

For at least these reasons, Applicants submit that independent Claim 1 is patentable, and that independent Claims 12, 32, 50, 58, 86 and 99 are patentable for at least similar reasons.

Applicants further submit that several of the rejected dependent claims are separately patentable for at least the reasons discussed in the Amendment of May 2, 2005. In the "Response to Arguments," the final Office Action cites *In re Keller* for the proposition for the "the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. Final Office Action, p. 2. Applicants note that the Court of Appeals for the Federal Circuit has provided much more detailed and specific guidance on this specific question in much more recent precedent. To establish a *prima facie* case of obviousness, there must be some suggestion or motivation, either in the references

themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings, and there must be a reasonable expectation of success of the combination. See MPEP § 2143. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). This requires evidence from the prior art that is *clear and particular*, and this requirement is not met by merely offering broad, conclusory statements about teachings of references. *In re Dembiczak*, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). In particular, there must be particular evidence from the prior art as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed. *In re Kotzab*, 55, USPQ2d 1313, 1317 (Fed. Cir. 2000).

The obviousness rejections in Office Action mailed March 29, 2005, which appear to be restated in the final Office Action, fail to meet these requirements. For example, in the rejections of dependent Claims 9, 27, 49, 57, 60, 88 and 107, which appear to combine Atarius with Applicants' alleged admitted prior art, the Office Action of March 29, 2005 fails to provide any clear and particular evidence from the prior art of a teaching or suggestion to combine Atarius and the alleged admitted prior art in this manner. In fact, the rejection fails to cite *any* particular motivation for such a combination. This simply is not a sufficient basis for a § 103 rejection.

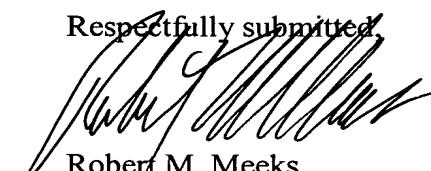
A similar lack of support is provided in several of the other rejections of the dependent claims. For example, in rejecting Claims 2, 13 and 100, the Office Action of March 29, 2005 "takes official notice that after the first data has been processed through an element in fig. 3, the next data would be processed without waiting for all of the elements to complete processing since this would make the system work faster." Office Action of March 29, 2005, pp. 3 and 4. There is no evidentiary basis provided for such "official notice" and, should this assertion be maintained, Applicants respectfully request citation of specific evidence that supports it. The Office Action also states that it would have been obvious to modify Atarius "with generating the second one before determining whether to further process the first one or to process the second one as indicated by instant claims . . . because

Atarius suggests a fast system and accordingly one element would not want to wait for all of the other elements down the chain to finish processing before the first element processes another data . . ." Office Action of March 29, 2005, p. 4. The Office Action fails, however, to cite any particular portion of Atarius that teaches the alleged nature of the processing of a "first one" and a "second one." Moreover, even if Atarius suggests a "fast system," this is mere statement of a general desire, and provides no clear and particular suggestion as to why the particular proposed modification of Atarius would provide such a fast system. Similar deficiencies are also present in the rejections of Claims 3, 14, and 101.

### **Conclusion**

Applicants request reconsideration and withdrawal of the rejections of the claims for at least the reasons discussed above. Applicants further submit that the claims are in condition for allowance, which is respectfully requested. Applicants encourage the Examiner to contact the undersigned by telephone to resolve any remaining issues.

Respectfully submitted,



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